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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **WESTLAKE CARE PHARMACY 32144** Agoura Road, #101 Westlake Village, CA 91361 Pharmacy Permit No. PHY 49290 and **ASHER KASHANCHI** Agoura Road, #101 Westlake Village, CA 91361 Pharmacist License No. RPH 46942 Respondent.	Case No. 4231 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about November 20, 2008, the Board of Pharmacy issued Permit Number PHY 49290 to Westlake Care Pharmacy (WESTLAKE CARE PHARMACY). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on November 1,

2013, unless renewed. Asher Kashanchi (ASHER KASHANCHI) has been the President and Pharmacist-in-Charge of WESTLAKE CARE PHARMACY since November 20, 2008. Jack Richman has been the Vice President of WESTLAKE CARE PHARMACY since November 20, 2008. Annette Richman has been the Secretary of WESTLAKE CARE PHARMACY since November 20, 2008.

3. On or about April 11, 2005, the Board issued Pharmacist License No. RPH 46942 to Asher Kashanchi (ASHER KASHANCHI). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY AUTHORITIES

5. Section 118, subdivision (b), of the Code states:

" The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

6. Section 4006 of the Code states:

"The board may adopt regulations consistent with this chapter and Section 111485 of the Health and Safety Code **or** regulations adopted thereunder, limiting or restricting the furnishing of a particular drug upon a finding that the otherwise unrestricted retail sale of the drug pursuant to Section 4057 is dangerous to the public health or safety."

7. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

8. Section 4059 of the Code states:

a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

(b) This section does not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, a description of the device, and the quantity supplied.

9. Section 4081, subdivision (a) of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

10. Section 4301 of the Code, subdivision (q) of the Code states:

"...Unprofessional conduct shall include, but is not limited to engaging in any conduct that subverts or attempts to subvert an investigation of the board."

11. Section 4306.5 of the Code states:

"Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function."

12. Section 4342 of the Code states:

"(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

13. Section 111430 of the Health and Safety Code states:

"A drug or device is misbranded if it was manufactured in an establishment not duly registered with the Secretary of Health, Education, and Welfare of the United States."

14. Section 111440 of the Health and Safety Code states:

"It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded."

15. Section 111450 of the Health and Safety Code states:

"It is unlawful for any person to receive in commerce any drug or device that is misbranded or to deliver or proffer for delivery any drug or device."

16. Section 111490 of the Health and Safety Code states:

(a) A drug or device that is subject to Section 111470 is misbranded if at any time prior to dispensing, its label fails to bear the statement "Caution: federal law prohibits dispensing without prescription," or "Caution: state law prohibits dispensing without prescription," or "R x only." A drug or device to which Section 111470 does not apply is misbranded if at any time prior to dispensing its label bears the caution statement or "R x only" quoted in the preceding sentence.

(b) A device that is subject to Section 111470 is misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: federal law restricts this device.to sale by or on the order of a ____," the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. A device to which Section 111470 does not apply is misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1711 states:

"...

(c) (1) Each quality assurance program shall be managed in accordance with written policies and procedures maintained in the pharmacy in an immediately retrievable form.

...

18. California Code of Regulations, title 16, section 1715 states:

"...

(d) Each self-assessment shall be kept on file in the pharmacy for three years after it is performed."

19. California Code of Regulations, title 16, section 1718, states:

"'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332. "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

20. California Code of Regulations, title 16, section 1793.7, subdivision (d), states:

"...

(c) A pharmacy technician must wear identification clearly identifying him or her as a pharmacy technician.

"(d) Any pharmacy employing or using a pharmacy technician shall develop a job description and written policies and procedures adequate to ensure compliance with the provisions of Article 11 of this Chapter, and shall maintain, for at least three years from the time of making, records adequate to establish compliance with these sections and written policies and procedures."

COST RECOVERY

21. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Subverting the investigation)

22. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 4301, subdivision (q) of the Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector requested the production of the copies of the Self Assessment, QA, technician P/P, acquisition and disposition documents for medications Zyprexa 5 mg, Caduet 10/20 and Abilify 10 mg from the time Westlake Care Pharmacy was originally opened for business up to and including the date of the inspection (February 3, 2011). Further, the inspector requested an explanation to the following: (1) why were there one hundred nineteen (119) tablets in a one hundred (100) count bottle, (2) the location where the medications were shipped, (3) the invoices from a wholesaler, if

available, and the length of time the drugs were being dispensed.[1] The inspector provided fourteen (14) days to comply. On February 17, 2011, Westlake Care Pharmacy forwarded the impairment policy, a technician job statement, and the DEA inventory. The remaining requested documents were not produced to the Board Inspector, in violation of section 4301, subdivision (q) of the Code.

SECOND CAUSE FOR DISCIPLINE

(Failure to Have Pharmacy Records Available and Open for Inspection)

23. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1718 of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector requested the production of the acquisition documents for the Canadian drugs, however, the Respondents failed to comply with said request, in violation of section 1718 of California Code of Regulations.

THIRD CAUSE FOR DISCIPLINE

(Name Tag Missing on the Pharmacy Technician)

24. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1793.7, subdivision (c) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the technician did not have a name tag identifying herself as a technician, in violation of 1793.7, subdivision (c) of California Code of Regulations.

FOURTH CAUSE FOR DISCIPLINE

(Controlled Substance Inventory Missing)

25. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1718 of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector

[1] During the inspection, Annette Richman asked the Board Inspector whether it would be better to provide the documents and get fined by the Board, or whether not provide the documents at all.

found that the biennial DEA inventories were missing, in violation of 1718 of California Code of Regulations.

FIFTH CAUSE FOR DISCIPLINE

(Technician Policies and Job Duties Unavailable during the Inspection)

26. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1793.7, subdivision (d) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the technician policies or procedures and/or job duty statements were unavailable for inspection, in violation of 1793.7, subdivision (d) of California Code of Regulations.

SIXTH CAUSE FOR DISCIPLINE

(Self Assessment Form Unavailable During the Inspection)

27. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1715, subdivision (d) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the Self Assessment Form was unavailable for inspection, in violation of section 1715, subdivision (d) of California Code of Regulations.

SEVENTH CAUSE FOR DISCIPLINE

(Quality Assurance Policy and Procedure Unavailable During the Inspection)

28. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1711, subdivision (c)(1) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the Quality Assurance Policy and Procedure was unavailable for inspection, in violation of section 1711, subdivision (c)(1) of California Code of Regulations.

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EIGHTH CAUSE FOR DISCIPLINE

(Inadequate Recordkeeping)

29. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 4059, subdivisions (a) and (b) of the Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found numerous prescriptions filled for patients from Drug Company which were depoted at Westlake Care Pharmacy, but there were no documentation indicating that the drugs had been transferred to Westlake Care Pharmacy, in violation of section 4059, subdivisions (a) and (b) of the Code.

NINETH CAUSE FOR DISCIPLINE

(Misbranded Drugs)

30. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111430 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following drugs at Westlake Care Pharmacy which were not intended for use in the United States, in violation of section 111430 of the Health and Safety Code. Specifically The Board Inspector asked ASHER KASHANCHI from where he received the English/French drugs. ASHER KASHANCHI told the inspector that he received them from his wholesaler. When the Board Inspector asked for the record, ASHER KASHANCHI asked his partner, Annette Richman, part owner of the Westlake Pharmacy, however, no one produced any records. After thirty (30) minutes, the Board Inspector asked again for the records, and ASHER KASHANCHI and Ms. Richman admitted that they did not have them. The Board Inspector inquired whether they went over the border to Canada to obtain the English/French drugs, however, they did not answer. The inspector informed them that they needed to have documents showing where the drugs came from. Annette Richman then admitted that she had purchased the drugs from a pharmacy in Canada and that she did not have the documentation. The inspector asked how the pharmacy billed for the Canadian product since it did not have a NDC number. ASHER KASHANCHI stated the pharmacy billed under the NDC for the similar United States product.

The inspector noted that there was no US product on the shelves for those English/French drugs. The following drugs were misbranded:

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin XL	150	90	1	Yes	Yes
Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
Abilify	5	30	2	Yes	Yes
Abilify	10	30	3	Yes	Yes
Aromasin	25	30	1	Yes	Yes
Asacol	400	180	2	Yes	Yes
Caduet	1020	90	180	Yes	Yes
Maxcalt RPD	10	6	3	No	Yes
Seroquel	300	100	1	Yes	Yes
SeroquelXR	300	60	2	Yes	Yes
Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes

Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

TENTH CAUSE FOR DISCIPLINE

(Unlawfully Holding, Delivering or Offering for Sale Misbranded Drugs)

31. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111440 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following drugs at Westlake Care Pharmacy which were held and offered for sale, in violation of section 111440 of the Health and Safety Code.

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin XL	150	90	1	Yes	Yes
Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
Abilify	5	30	2	Yes	Yes
Abilify	10	30	3	Yes	Yes
Aromasin	25	30	1	Yes	Yes
Asacol	400	180	2	Yes	Yes

Caduet	1020	90	180	Yes	Yes
Maxcalt RPD	10	6	3	No	Yes
Seroquel	300	100	1	Yes	Yes
SeroquelXR	300	60	2	Yes	Yes
Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes
Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

ELEVENTH CAUSE FOR DISCIPLINE

(Unlawfully Receiving Misbranded Drugs)

32. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111450 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following misbranded drugs were received in commerce and delivered by Westlake Care Pharmacy which were not intended for use in the United States, in violation of section 111450 of the Health and Safety Code.

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin	150	90	1	Yes	Yes

XL					
Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
Abilify	5	30	2	Yes	Yes
Abilify	10	30	3	Yes	Yes
Aromasin	25	30	1	Yes	Yes
Asacol	400	180	2	Yes	Yes
Caduet	1020	90	180	Yes	Yes
Maxcalt RPD	10	6	3	No	Yes
Seroquel	300	100	1	Yes	Yes
SeroquelXR	300	60	2	Yes	Yes
Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes
Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

TWELFTH CAUSE FOR DISCIPLINE

(Misbranded Drugs)

33. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111490 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following misbranded drugs were found at Westlake Care Pharmacy, in violation of section 111490 of the Health and Safety Code.

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin XL	150	90	1	Yes	Yes
Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
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Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes
Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Permit Number PHY 49290, issued to WESTLAKE CARE PHARMACY;

2. Revoking or suspending Pharmacist License Number RPH 46942, issued to ASHER KASHANCHI;

3. Ordering Asher Kashanchi to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 12/20/12

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **WESTLAKE CARE PHARMACY 32144** Agoura Road, #101 Westlake Village, CA 91361 Pharmacy Permit No. PHY 49290 and **ASHER KASHANCHI** Agoura Road, #101 Westlake Village, CA 91361 Pharmacist License No. RPH 56942 Respondent.	Case No. 4231 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about November 20, 2008, the Board of Pharmacy issued Permit Number PHY 49290 to Westlake Care Pharmacy (WESTLAKE CARE PHARMACY). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on November 1,

2012, unless renewed. Asher Kashanchi (ASHER KASHANCHI) has been the President and Pharmacist-in-Charge of WESTLAKE CARE PHARMACY since November 20, 2008. Jack Richman has been the Vice President of WESTLAKE CARE PHARMACY since November 20, 2008. Annette Richman has been the Secretary of WESTLAKE CARE PHARMACY since November 20, 2008.

3. On or about April 11, 2005, the Board issued Pharmacist License No. RPH 569120 to Asher Kashanchi (ASHER KASHANCHI). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY AUTHORITIES

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" The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

6. Section 4006 of the Code states:

"The board may adopt regulations consistent with this chapter and Section 111485 of the Health and Safety Code **or** regulations adopted thereunder, limiting or restricting the furnishing of a particular drug upon a finding that the otherwise unrestricted retail sale of the drug pursuant to Section 4057 is dangerous to the public health or safety."

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"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

8. Section 4059 of the Code states:

a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

(b) This section does not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, a description of the device, and the quantity supplied.

9. Section 4081, subdivision (a) of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

10. Section 4301 of the Code, subdivision (q) of the Code states:

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11. Section 4306.5 of the Code states:

"Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function."

12. Section 4342 of the Code states:

"(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

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"A drug or device is misbranded if it was manufactured in an establishment not duly registered with the Secretary of Health, Education, and Welfare of the United States."

14. Section 111440 of the Health and Safety Code states:

"It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded."

15. Section 111450 of the Health and Safety Code states:

"It is unlawful for any person to receive in commerce any drug or device that is misbranded or to deliver or proffer for delivery any drug or device."

16. Section 111490 of the Health and Safety Code states:

(a) A drug or device that is subject to Section 111470 is misbranded if at any time prior to dispensing, its label fails to bear the statement "Caution: federal law prohibits dispensing without prescription," or "Caution: state law prohibits dispensing without prescription," or "R x only." A drug or device to which Section 111470 does not apply is misbranded if at any time prior to dispensing its label bears the caution statement or "R x only" quoted in the preceding sentence.

(b) A device that is subject to Section 111470 is misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: federal law restricts this device to sale by or on the order of a ____," the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. A device to which Section 111470 does not apply is misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1711 states:

"...

(c) (1) Each quality assurance program shall be managed in accordance with written policies and procedures maintained in the pharmacy in an immediately retrievable form.

..."

18. California Code of Regulations, title 16, section 1715 states:

"...

(d) Each self-assessment shall be kept on file in the pharmacy for three years after it is performed."

19. California Code of Regulations, title 16, section 1718, states:

"'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332. "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

20. California Code of Regulations, title 16, section 1793.7, subdivision (d), states:

"...

(c) A pharmacy technician must wear identification clearly identifying him or her as a pharmacy technician.

"(d) Any pharmacy employing or using a pharmacy technician shall develop a job description and written policies and procedures adequate to ensure compliance with the provisions of Article 11 of this Chapter, and shall maintain, for at least three years from the time of making, records adequate to establish compliance with these sections and written policies and procedures."

COST RECOVERY

21. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Subverting the investigation)

22. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 4301, subdivision (q) of the Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector requested the production of the copies of the Self Assessment, QA, technician P/P, acquisition and disposition documents for medications Zyprexa 5 mg, Caduet 10/20 and Abilify 10 mg from the time Westlake Care Pharmacy was originally opened for business up to and including the date of the inspection (February 3, 2011). Further, the inspector requested an explanation to the following: (1) why were there one hundred nineteen (119) tablets in a one hundred (100) count bottle, (2) the location where the medications were shipped, (3) the invoices from a wholesaler, if

available, and the length of time the drugs were being dispensed.[1] The inspector provided fourteen (14) days to comply. On February 17, 2011, Westlake Care Pharmacy forwarded the impairment policy, a technician job statement, and the DEA inventory. The remaining requested documents were not produced to the Board Inspector, in violation of section 4301, subdivision (q) of the Code.

SECOND CAUSE FOR DISCIPLINE

(Failure to Have Pharmacy Records Available and Open for Inspection)

23. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1718 of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector requested the production of the acquisition documents for the Canadian drugs, however, the Respondents failed to comply with said request, in violation of section 1718 of California Code of Regulations.

THIRD CAUSE FOR DISCIPLINE

(Name Tag Missing on the Pharmacy Technician)

24. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1793.7, subdivision (c) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the technician did not have a name tag identifying herself as a technician, in violation of 1793.7, subdivision (c) of California Code of Regulations.

FOURTH CAUSE FOR DISCIPLINE

(Controlled Substance Inventory Missing)

25. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1718 of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector

[1] During the inspection, Annette Richman asked the Board Inspector whether it would be better to provide the documents and get fined by the Board, or whether not provide the documents at all.

found that the biennial DEA inventories were missing, in violation of 1718 of California Code of Regulations.

FIFTH CAUSE FOR DISCIPLINE

(Technician Policies and Job Duties Unavailable during the Inspection)

26. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1793.7, subdivision (d) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the technician policies or procedures and/or job duty statements were unavailable for inspection, in violation of 1793.7, subdivision (d) of California Code of Regulations.

SIXTH CAUSE FOR DISCIPLINE

(Self Assessment Form Unavailable During the Inspection)

27. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1715, subdivision (d) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the Self Assessment Form was unavailable for inspection, in violation of section 1715, subdivision (d) of California Code of Regulations.

SEVENTH CAUSE FOR DISCIPLINE

(Quality Assurance Policy and Procedure Unavailable During the Inspection)

28. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 1711, subdivision (c)(1) of California Code of Regulations, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found that the Quality Assurance Policy and Procedure was unavailable for inspection, in violation of section 1711, subdivision (c)(1) of California Code of Regulations.

EIGHTH CAUSE FOR DISCIPLINE

(Inadequate Recordkeeping)

29. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 4059, subdivisions (a) and (b) of the Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found numerous prescriptions filled for patients from Drug Company which were depoted at Westlake Care Pharmacy, but there were no documentation indicating that the drugs had been transferred to Westlake Care Pharmacy, in violation of section 4059, subdivisions (a) and (b) of the Code.

NINETH CAUSE FOR DISCIPLINE

(Misbranded Drugs)

30. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111430 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following drugs at Westlake Care Pharmacy which were not intended for use in the United States, in violation of section 111430 of the Health and Safety Code. Specifically The Board Inspector asked ASHER KASHANCHI from where he received the English/French drugs. ASHER KASHANCHI told the inspector that he received them from his wholesaler. When the Board Inspector asked for the record, ASHER KASHANCHI asked his partner, Annette Richman, part owner of the Westlake Pharmacy, however, no one produced any records. After thirty (30) minutes, the Board Inspector asked again for the records, and ASHER KASHANCHI and Ms. Richman admitted that they did not have them. The Board Inspector inquired whether they went over the border to Canada to obtain the English/French drugs, however, they did not answer. The inspector informed them that they needed to have documents showing where the drugs came from. Annette Richman then admitted that she had purchased the drugs from a pharmacy in Canada and that she did not have the documentation. The inspector asked how the pharmacy billed for the Canadian product since it did not have a NDC number. ASHER KASHANCHI stated the pharmacy billed under the NDC for the similar United States product. The inspector noted that there was no US product on the shelves for those English/French drugs. The following drugs were misbranded:

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin XL	150	90	1	Yes	Yes
Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
Abilify	5	30	2	Yes	Yes
Abilify	10	30	3	Yes	Yes
Aromasin	25	30	1	Yes	Yes
Asacol	400	180	2	Yes	Yes
Caduet	1020	90	180	Yes	Yes
Maxcalt RPD	10	6	3	No	Yes
Seroquel	300	100	1	Yes	Yes
SeroquelXR	300	60	2	Yes	Yes
Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes
Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

TENTH CAUSE FOR DISCIPLINE

(Unlawfully Holding, Delivering or Offering for Sale Misbranded Drugs)

31. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111440 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following drugs at Westlake Care Pharmacy which were held and offered for sale, in violation of section 111440 of the Health and Safety Code.

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin XL	150	90	1	Yes	Yes
Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
Abilify	5	30	2	Yes	Yes
Abilify	10	30	3	Yes	Yes
Aromasin	25	30	1	Yes	Yes
Asacol	400	180	2	Yes	Yes
Caduet	1020	90	180	Yes	Yes
Maxcalt RPD	10	6	3	No	Yes

Seroquel	300	100	1	Yes	Yes
SeroquelXR	300	60	2	Yes	Yes
Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes
Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

ELEVENTH CAUSE FOR DISCIPLINE

(Unlawfully Receiving Misbranded Drugs)

32. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111450 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following misbranded drugs were received in commerce and delivered by Westlake Care Pharmacy which were not intended for use in the United States, in violation of section 111450 of the Health and Safety Code.

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin XL	150	90	1	Yes	Yes

Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
Abilify	5	30	2	Yes	Yes
Abilify	10	30	3	Yes	Yes
Aromasin	25	30	1	Yes	Yes
Asacol	400	180	2	Yes	Yes
Caduet	1020	90	180	Yes	Yes
Maxcalt RPD	10	6	3	No	Yes
Seroquel	300	100	1	Yes	Yes
SeroquelXR	300	60	2	Yes	Yes
Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes
Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

TWELFTH CAUSE FOR DISCIPLINE

(Misbranded Drugs)

33. Respondents WESTLAKE CARE PHARMACY and ASHER KASHANCHI are subject to disciplinary action under section 111490 of the Health and Safety Code, in that during a Board investigation of the Westlake Care Pharmacy on February 3, 2011, the Board Inspector found the following misbranded drugs were found at Westlake Care Pharmacy, in violation of section 111490 of the Health and Safety Code.

Drug Name	Strength	Pills Per Unit	Number of Units	Available in the United States	Misbranded
Fosavance	70/2800	4	6	No	Yes
Imitrex DF	100	24	2	No	Yes
Actonel	150	1	10	Yes	Yes
Wellbutrin XL	150	90	1	Yes	Yes
Wellbutrin XL	300	90	1	Yes	Yes
Niaspan FCT	750	90	1	No	Yes
Niaspan FCT	1000	90	1	No	Yes
Abilify	5	30	2	Yes	Yes
Abilify	10	30	3	Yes	Yes
Aromasin	25	30	1	Yes	Yes
Asacol	400	180	2	Yes	Yes
Caduet	1020	90	180	Yes	Yes
Maxcalt RPD	10	6	3	No	Yes
Seroquel	300	100	1	Yes	Yes
SeroquelXR	300	60	2	Yes	Yes
Prevacid Fastab	15	30	3	Yes	Yes
Singulair	4	30	3	Yes	Yes
Zyprexa	5	100	2	Yes	Yes
Zyprexa	10	100	1	Yes	Yes
Zyprexa	20	100	2	Yes	Yes

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Permit Number PHY 49290, issued to WESTLAKE CARE PHARMACY;

2. Revoking or suspending Pharmacist License Number RPH 569120, issued to ASHER KASHANCHI;

3. Ordering Asher Kashanchi to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 6/13/12

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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